

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0202P

Use Tax

Calendar Years Ended 12/31/97 and 12/31/98

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-3-4-4.1

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was assessed a negligence penalty for failure to assess tax on numerous fixed assets and general purchases in calendar year 1998. Taxpayer incurred a tax credit in 1997. A prior audit was dated May 19, 1995 that contained similar issues.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed because it overpaid tax in 1997 that affirmatively establishes that it attempts to provide reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Further it protests the ten percent (10%) penalty to all of 1998 without any considerations give to the 1997 over-assessment. Taxpayer further states that many of the issues addressed in the audit relate to gray areas in the tax law that it is accepting without protest.

The penalty was assessed in this instance because the Taxpayer did not self-assess tax on numerous fixed assets and general purchases, issues that were in a prior audit. In addition, 24.4% of the use tax due was not remitted in 1998.

Taxpayer overpaid in 1997 and believes the department should take this into consideration when applying penalty to all of 1998. Each year stands on its own at audit. Taxpayer's overpayment in 1997 does not negate or reduce the assessment for 1998.

Taxpayer has not provided reasonable cause to allow a waiver of the penalty.

FINDING

Taxpayer's protest is denied.